



letter. On November 13, 1991, Hawkins investigated the property again and allegedly found open dumping leading to litter and open burning going on at the site. The AC flowing from the November 13, 1991, inspection is the subject of this appeal.

The testimony at hearing focused mainly on open dumping resulting in open burning even though this was not charged by the County. Very little testimony was given concerning the charges of operating a sanitary landfill without a license or open dumping leading to litter.

#### ISSUE

At hearing, Hawkins testified that on November 13, 1991, he received a complaint about the Abert property and went out to investigate. (Tr. at 11-12.) Hawkins observed Mr. Joe Williams tending a fire composed of glass, metal, cardboard, wood, paper, and landscape waste on the Abert property. (Tr. at 8.) Hawkins entered pictures of the fire as complainant's exhibit 1 at hearing. (Tr. at 8.) Hawkins also testified that Williams told him he was working for Abert and that he was burning the waste from cleaning the property. (Tr. at 9.) In addition, Hawkins testified that Williams told him that Abert knew about the fire and had been out to the property earlier that day. (Tr. at 9 and 13.) In conclusion, Hawkins testified that he filled out an inspection report alleging litter and open burning. (Tr. at 9.)

In contrast, Abert testified that Williams was hired as an independent contractor and asked to clean-up the barn on the property and to take the waste out in back of the barn. (Tr. at 19.) Abert testified that he intended to take the waste to the Alton dump later as he had done in the past. (Tr. at 21.) Abert also testified that he was not aware of the fire since he was at the site in the morning before it was started. (Tr. at 20.)

The next person to testify at hearing was Williams. He testified that Abert did not tell him to burn the waste. (Tr. at 25.) In fact, he testified that Abert asked him to remove the waste and to place it outside. (Tr. at 26.) Williams also testified that there was never any discussion between him and Abert about burning the waste and that Abert was only on the scene for about 10 or 15 minutes in the morning on the day of the incident. (Tr. at 26.) In addition, Williams testified that he did not tell Hawkins that Abert was aware of the fire. (Tr. at 28.) Williams testified that Abert asked him to clean the barn but did not tell him to burn the waste materials. (Tr. at 28.)

#### DISCUSSION

The County charged in its AC that Abert:

... operated said open dump by causing or allowing

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litter (Section 21(q)(1) of the Act) in violation of Ill. Rev. Stat. 1985, Supp. 1986, ch. 111 1/2, par. 1021 (p)(5).

(Comp. at, 2.)<sup>1</sup>

Section 21(q)(1) of the Act prohibits a person from causing or allowing the open dumping of waste in a manner which results in litter. Section 21(p)(5) prohibits any person from conducting a sanitary landfill without a permit in such a way that it causes uncovered waste which remains at the conclusion of any operating day.

The County's allegations are unclear. The County's AC seemed to charge Abert with open dumping causing litter in violation of operating a sanitary landfill without daily cover. However, the form of the complaint was so confusing, that it was unclear exactly what the County was charging.

Section 31.1 of the Act requires notice be given to a party against whom a formal complaint is filed. Section 31.1 states in pertinent part that,

...the [county], shall issue and serve upon the person complained against a written notice, together with a formal complaint, which shall specify the provision of this law...under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the law

The County's complaint, however unclear, did give Abert notice that he was charged with operating a sanitary landfill without daily cover and open dumping resulting in litter. However, despite the fact that the inspection report and all the testimony at hearing alleges open burning, the County failed to charge Abert with open burning. Therefore, open dumping resulting in open burning is not at issue in this case.

Finally, the Board emphasizes the importance of citing to correct sections of the statute and suggests the County obtain a current form of the statute. Many laws have been changed since the 1986 supplement cited by the County.

<sup>1</sup>Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections enforceable through the administrative citation process have been changed from 21(p) and 21(q) to 21(o) and 21(p) respectively. The County's AC reflects the pre-amendment section numbers.

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Although the County's charge that Abert was conducting a sanitary landfill without a permit, in violation of Section 21(p)(5) of the Act, gives Abert sufficient notice, it does not apply. In IEPA v. IPCB et al., 186 Ill. App. 3d 995, 542 N.E.2d 1141 (1989), the appellate court affirmed the Board's finding that a "sanitary landfill" includes only sites permitted by the Illinois Environmental Protection Agency (Agency). (Id., at 1000.) The Board reasoned that if a person is conducting a sanitary landfill without a permit that the site is not a sanitary landfill as defined by the Act. (Id., at 1001.) Thus, the Board explained, since one can not be issued an administrative citation for violating 21(p) unless they are operating a sanitary landfill, it is improper to charge unpermitted sites with this violation. (Id., at 1001.) Therefore, the Board finds that in this case, Abert did not violate Section 21(p)(5) of the Act.

The Board must next examine whether Abert violated Section 21(q)(1) of the Act which prohibits a person from causing or allowing the open dumping of waste in a manner which results in litter. Section 3.24 of the Act defines "open dumping" as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." Section 3.53 defines "waste" as, inter alia, "garbage...or other discarded material."

In an appellate court case similar to the instant case, after demolishing two buildings, John Vander burned demolition debris. (IEPA v. IPCB et al., 219 Ill. App. 3d 975, 579 N.E. 2d 1215 (1991).) Vander was charged with open dumping resulting in litter and open burning. The question before the appellate court was the definition of open dumping.

The court in the Vander case explained that mere consolidation of refuse does not constitute open dumping. The court held that open dumping occurs when, "refuse is consolidated at a disposal site that does not fulfill sanitary landfill requirements." (Id., at 978, citing Ill. Rev. Stat. 1989, ch. 111 1/2 par. 1003.24.) The court went on to state that a site becomes a disposal site when the waste is disposed of in such a way that it enters the environment, is emitted into the air, or is discharged into water. (Id., at 979, citing Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1003.08.)

In the case at hand, the refuse from Abert's barn was consolidated and burned. The burning caused some of the refuse to be emitted into the air. Hawkins testified that in among the items in the fire on the Abert property was glass, metal, cardboard, wood, paper, and landscape waste. Although the County did not charge Abert with open dumping leading to open burning, it was only after the waste materials on Abert's property were burned that Williams' actions could be construed as open dumping.

The Board notes that the inspection report prepared by Hawkins states, "Waste should be put in containers or dumpsters until transfer to permitted landfill." (Inspection Rep. at 3.) The Board cautions Hawkins that a person may consolidate waste outside of his barn as long as the site where he consolidates it does not become a disposal site that does not fulfill sanitary landfill requirements. (Vander at, 979.) In other words, a person need not place the waste directly into containers, as long as the waste is disposed of properly before the area where it is stacked becomes a disposal site.

Having found that open dumping existed, the next question before the Board is whether the open dumping resulted in litter. In St. Clair County v. Louis Mund, (August 26, 1991), AC 90-64, the Board adopted the definition of litter contained in the Litter Control Act. This definition states:

litter means any discarded, used or unconsumed substance or waste. Litter may include, but is not limited to any garbage, trash, refuse, debris...or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise disposed of improperly.

(Ill. Rev. Stat. 1991, ch. 38, par. 86.3.)

The items Hawkins testified to seeing burning at the Abert property fit the first portion of the litter definition. They were waste. However, the definition goes on to state that in order to be litter, the waste must be discarded, abandoned, or otherwise disposed of improperly. Abert testified that he intended to dispose of the waste properly by taking it to a landfill. Yet, the waste was burned by Williams and was therefore, disposed of improperly. In this situation, the improper disposal by burning caused the waste materials to become litter. Thus, because the waste was burned (although open burning is not charged) the actions at the Abert property on November 13, constitute open dumping of waste in a manner which resulted in litter.

Under Section 21 of the Act, a violation occurs if one causes or allows the open dumping which resulted in litter. The testimony establishes that Williams set fire to the pile of waste. However, the testimony concerning whether Abert knew about the fire was conflicting. Both Abert and Williams testified that Abert told Williams to clean the barn and to stack the waste outside. Williams also testified that prior to Hawkins arriving at the property he had not told Abert about burning the waste. In contrast, Hawkins testified that Williams told him that Abert knew about the fire. Given the conflicting evidence, the Board does not find that the County has shown by clear and

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convincing evidence that Abert caused open dumping resulting in litter.

Having determined that Abert did not cause the open dumping resulting in litter, the Board must next determine whether Abert allowed the violation. Abert testified that he told Williams to stack the waste on the outside in back of the barn. In addition, Abert testified that it was his intent to put the waste in his truck and take it to the Alton dump. Although Abert did not specifically tell Williams not to burn the waste, Williams was exceeding the directions given to him by Abert when he burned the waste. In fact, Williams in his testimony stated that he and Abert did not have a discussion about him burning the waste but did discuss the fact that Abert wanted the waste stacked behind the barn. The Board believes Abert's instructions were adequate. Given the circumstances of this case, the Board finds that Abert did not allow the violation.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

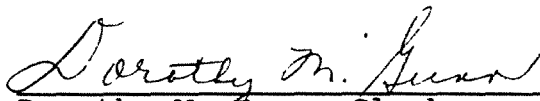
The Board finds that Abert did not violate sections 21(q)(1) and 21(p)(5) of the Act. Therefore, this AC is dismissed.

IT IS SO ORDERED.

R. C. Flemal dissented.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, Ch 111 1/2, par. 1041) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 17<sup>th</sup> day of December, 1992, by a vote of 6-1.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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